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Attorney for Defendant, Motrivity, Inc.

UNITED STATES DISTRICT COURT

MHP

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CAMELLIA WALKER, individually and on behalf of a class of similarly situated individuals,

Plaintiff,

vs.

MOTRICITY, INC., a Delaware corporation,

Defendant.

**CV
08**

Case No. _____

3648

MOTRICITY, INC.'S NOTICE OF REMOVAL

Defendant, Motrivity, Inc. ("Motrivity"), pursuant to 28 U.S.C. §§ 1441, 1446, and 1453, hereby gives notice of the removal of the above-captioned action from the Superior Court of the State of California for the County of Alameda to the United States District Court for the Northern District of California and states:

I. INTRODUCTION

1. On July 3, 2008, Plaintiff, individually and on behalf of all other wireless telephone subscribers similarly situated in California, filed an action in the Superior Court of the

MOTRICITY, INC.'S NOTICE OF REMOVAL

1 State of California for the County of Alameda captioned Walker v. Motricity, Inc., Case No. 08-
2 396630. Copies of the Summons and Complaint served on Motricity are attached as Exhibit A.

3 2. This action is a civil action of which this Court has original jurisdiction under 28
4 U.S.C. § 1332, and is one which may be removed to this Court by Motricity pursuant to the
5 provisions of 28 U.S.C. 1441.

6 3. This case is properly removed to this Court pursuant to 28 U.S.C. § 1441,
7 because Motricity has satisfied the procedural requirements for removal set forth in 28 U.S.C. §
8 1446(b), and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
9 1332(d) and 1453.

10 4. The Superior Court of the State of California for the County of Alameda is
11 located within the United States District Court for the Northern District of California. Therefore
12 venue is proper under 28 U.S.C. § 1441(a).

13 5. **Intradistrict Assignment:** Alameda County is the county in which this action
14 allegedly arose. Local Rule 3-2(d) provides that, "all civil actions which arise in the counties of
15 Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco,
16 San Mateo or Sonoma shall be assigned to the San Francisco Division or the Oakland Division."
17 Therefore, assignment of this action to the San Francisco division is appropriate.

18 **II. JURISDICTION PURSUANT TO CLASS ACTION FAIRNESS ACT**

19 6. This case is subject to removal pursuant to the Class Action Fairness Act of
20 2005, 28 U.S.C. §§ 1332, 1453 ("CAFA"). CAFA grants federal courts jurisdictions over class
21 actions in which: (1) the aggregate number of proposed plaintiffs is 100 or greater; (2) any
22 member of the plaintiff class is a citizen of a different state than the defendant thus establishing
23 the required minimal diversity; (3) the primary defendants are not States, State officials, or other
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1 governmental entities; and (4) the aggregate amount-in-controversy exceeds \$5,000,000. 28
 2 U.S.C. § 1332(d)(2)(A), (d)(5)(A) - (B), and (d)(6).

3 7. These jurisdictional requirements are satisfied by the allegations of the
 4 Plaintiff's Complaint and certain facts related to the nature and extent of Motricty's business. As
 5 a result, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
 6 1332(d).
 7

8 8. **This Action is a Class Action Consisting of More Than 100 Members:** In the
 9 Complaint, Plaintiff claims to represent a class of "all wireless telephone subscribers in California
 10 who suffered losses or damages as a result of incurring charges on their cellular telephone bills
 11 from or on behalf of Motricty not authorized by the subscriber . . ." (Compl., ¶ 34.) Plaintiff
 12 claims that the putative class consists of "thousands of individuals and other entities, making
 13 joinder impractical . . ." (Compl., ¶ 35.) Based on these allegations, the aggregate number of
 14 class members in the class that Plaintiff purports to represent is greater than 100 and thus satisfies
 15 28 U.S.C. § 1332(d)(5)(B).
 16

17 9. **Plaintiff is a Citizen of a Different State Than Motricty:** Plaintiff is a citizen
 18 of the State of California. (Compl., ¶ 1.) Motricty is, and was at the time Plaintiff commenced
 19 this action, a Delaware corporation with its principal place of business in the State of Washington.
 20 (Compl., ¶ 2.) The minimal diversity required by CAFA is met because Plaintiff and Motricty
 21 are citizens of different states. See 28 U.S.C. § 1332(d)(2)(A).
 22

23 10. **Motricty is Not a State, State Official, or Other Governmental Entity:** As
 24 stated above, Motricty is a private corporation and thus 28 U.S.C. § 1332(d)(5)(A) is met.

25 11. **The \$5,000,000 Amount-in-Controversy Requirement has Been Met:** The
 26 allegations in the Complaint and the nature and extent of Motricty's business both indicate that
 27

1 well over \$5,000,000 is in controversy in this action and, therefore, that CAFA's amount-in-
2 controversy requirement has been met.

3 12. First, the Complaint seeks injunctive relief under various California statutes
4 (Compl., ¶¶ 56, 61, 67, Prayer for Relief ¶ H.) The Complaint seeks an injunction to force
5 Motricity to obtain the consent of customers receiving mobile content by processing "a unique
6 'access code' for each customer account, provided by the carrier to the account holder and his/her
7 authorized representatives at the time [the account] is opened, and require that it be produced any
8 time a third-party attempts to charge the account. If a matching code is not provided, no charges
9 would be included on the customer's billing statement." (Compl., ¶¶ 24, 56, 61, 67.)

10 13. The potential cost to Motricity of complying with the injunction sought in the
11 Complaint exceeds \$5,000,000, even exclusive of any consideration of any monetary damages
12 sought by the plaintiff class. As set forth in the Declaration of Paul Bock, attached hereto as
13 Exhibit B, the minimum cost to Motricity of complying with the injunctive relief sought in the
14 Complaint is \$7,985,430.00. (Declaration of Paul Bock "Bock Decl.", Ex. B, ¶ 6.) This amount,
15 which is a reasonable estimate based on Bock's detailed breakdown of work to be performed to
16 comply with the injunctive relief sought, consists of one-time development costs as well as
17 maintenance costs to ensure compliance with the injunctive relief for a period of five (5) years.
18 (Id.) Moreover, five (5) years is a very conservative estimate for the period of time over which
19 Motricity would incur maintenance expenses to comply with the injunction, as the injunction
20 would be in effect indefinitely. Furthermore, as set forth in the Bock Declaration, the estimate of
21 \$7,985,430.00 is a very conservative cost estimate and the actual cost to Motricity in complying
22 with the injunctive relief sought would likely substantially exceed this nearly \$8 Million figure.
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14. Accordingly, the cost to Motricity of complying with the injunctive relief sought in the Complaint exceeds CAFA's \$5,000,000.00 minimum amount in controversy. This is exclusive of the Complaint's allegations that the class plaintiffs are entitled to monetary damages in addition to the injunctive relief. The additional consideration of monetary damages sought by the plaintiff class significantly increases the total amount in controversy – an amount which far exceeds \$8 Million, much less the \$5 Million jurisdictional requirement.

15. Because both the nature and extent of Motricity's business and Plaintiff's own
Complaint prove by a preponderance of the evidence that the amount-in-controversy exceeds
\$5,000,000, the amount-in-controversy requirement of 28 U.S.C. § 1332(d) is satisfied.

16. In summary, all of CAFA's jurisdictional requirements are satisfied by the allegations of the Plaintiff's Complaint and certain facts related to the nature and extent of Motricity's business. As a result, this Court has subject matter jurisdiction over this action.

III. PROCEDURAL STATEMENT

17. Because Plaintiff filed this action on July 3, 2008, this Notice of Removal has been timely filed within thirty (30) days of service pursuant to 28 U.S.C. § 1446(b).

18. Pursuant to 28 U.S.C. § 1441(a), removal to the United States District Court for the Northern District of California is proper because the Superior Court of the State of California, Alameda County is located within this District.

19. Pursuant to 28 U.S.C. § 1446(a), Motricity will promptly provide notice of this Notice of Removal to the Superior Court of the State of California, Alameda County.

20. By removing this action to this Court, Motricity does not waive any defenses, objections or motions available to it under state and federal law. Motricity expressly reserves the

1 right to require that the claims of Plaintiff and all members of the putative class be decided on an
2 individual basis through arbitration.

3 Wherefore, pursuant to 28 U.S.C. §§ 1441, 1446, and 1453, Defendant, Motricity, Inc.,
4 hereby removes the above-captioned civil action from the Superior Court of the State of
5 California, Alameda County.
6

7 Respectfully submitted,
8

9 Dated: July 30, 2008

10 DLA PIPER US LLP
11 By: Betty Shumener /SAF
12 Betty Shumener
13 Attorney for Defendant Motricity, Inc.
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6793591
SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
MOTRICITY, INC., a Delaware corporation,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
CAMELLIA WALKER, individually and on behalf of a class of similarly situated individuals,

FEE
FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ALAMEDA COUNTY

2008 JUL -3 PM 2:51

CLERK OF THE SUPERIOR COURT
By Dorothy Lee
DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte, y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
René C. Davidson Alameda County Courthouse
1225 Fallon St., Oakland, CA, 94612

CASE NUMBER
(Número del Caso)
R608 396630

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Alan Himmelfarb, KAMBEREDELSON LLC,
2757 Lconis Blvd., Los Angeles, CA 90058, (323) 585-8696

DATE: **JUL 03 2008** Clerk, by PAT S. SWEETEN Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

[SEAL]

- as an individual defendant.
- as the person sued under the fictitious name of (specify):

- on behalf of (specify):

under:	<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
	<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
	<input type="checkbox"/> other (specify):	

- by personal delivery on (date):

Page 1 of 1

FILED
ALAMEDA COUNTY

1 ALAN HIMMELFARB - SBN 90480
2 KAMBEREDELSON, LLC
2757 Leonis Boulevard
Vernon, California 90058
3 Telephone: (323) 585-8696

2008 JUL -3 PM 2:52

CLERK OF THE SUPERIOR COURT

BY Wendy Lee
DEPUTY

4 Attorneys For Plaintiff

5 SUPERIOR COURT OF THE STATE OF CALIFORNIA
6 FOR THE COUNTY OF ALAMEDA

7
8 CAMELLIA WALKER, individually and) Case No. RG 08 - 396630
9 on behalf of a class of similarly situated)
individuals,
10 Plaintiff,) COMPLAINT FOR DAMAGES AND
11 v.) INJUNCTIVE RELIEF
12 MOTRICITY, INC., a Delaware) [RESTITUTION/UNJUST
corporation,) ENRICHMENT; TORTIOUS
13) INTERFERENCE WITH A
14 Defendant.) CONTRACT; UNLAWFUL, UNFAIR
15) AND DECEPTIVE BUSINESS
16) PRACTICES (CAL. BUS. & PROF.
CODE §17200, *et seq.*)
17) DEMAND FOR JURY TRIAL
18) CLASS ACTION

BY FAX

19 CLASS ACTION COMPLAINT

20 Plaintiff Camellia Walker brings this class action complaint against Defendant
21 Motrictiy, Inc. ("Motrictiy"), seeking to stop Defendant's unlawful practice of charging
22 cellular telephone customers for products and services the customers have not authorized, a
23 practice which has resulted in Defendant unlawfully collecting thousands of dollars from
24 consumers statewide, and to obtain redress for all persons injured by its conduct. Plaintiff,
25 for her class action complaint, alleges as follows upon personal knowledge as to herself and
26 her own acts and experiences, and, as to all other matters, upon information and belief,
27 including investigation conducted by her attorneys.

28 COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

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PARTIES

1 Plaintiff Palma Walker is a resident of Alameda County, California.

3 2. Defendant Motricity, Inc. ("Motricity") is an "aggregator" and operates a
4 mobile transaction network that processes mobile payments and related transmissions on its
5 behalf and on behalf of carriers, other aggregators and third party mobile content providers,
6 including various subsidiaries through which it operates. Motricity is a Delaware corporation
7 with its headquarters and principal place of business in the State of Washington. Motricity
8 does business throughout the State of California and this county.

JURISDICTION

10 3. This Court has jurisdiction over the causes of action asserted herein pursuant
11 to the California Constitution, Article VI, §10, because this case is a cause not given by
12 statute to other trial courts.

13 4. This Court has jurisdiction over Defendant pursuant to Code of Civil
14 Procedure section § 410.10 because Defendant conducts business in the State of California
15 and/or many of Defendant's wrongful acts arose or emanated from California.

VENUE

17 5. Venue is proper in this Court pursuant to Code of Civil Procedure because
18 Plaintiff resides in Alameda County.

CONDUCT COMPLAINED OF

20 6. This case arises from two closely related phenomena. The first is the
21 capability of most cellular telephones, not only to make and receive telephone calls, but also
22 to send and receive text messages, including -- most significantly for present purposes --
23 "premium" text message services. These services, also known as "mobile content" include
24 products that range from the basic (customized ringtones for use with cell phones, sports
25 score reports, weather alerts, stock tips, horoscope services, and the like) to those requiring

1 more advanced capabilities (such as direct payment services, interactive radio and
2 participatory television).

3 7. The second underlying phenomenon of this case constitutes its very core.
4 That is, just as providers of premium mobile content deliver their products by means of cell
5 phone technology, they likewise charge and collect from their customers by "piggybacking"
6 on the cell phone bills sent out by the wireless carriers. Further, because the mobile content
7 providers by themselves most often lack the wherewithal to negotiate the necessary
8 relationships with the much larger wireless carriers, they do so with the help of third-party
9 companies, such as Motricity, known as aggregators. These aggregators act as middle-men,
10 representing numerous mobile content providers in arriving at the agreements that allow
11 them to use the billing and collection mechanisms of the wireless carriers. In turn, both the
12 aggregators and the wireless carriers are compensated for their services to the mobile content
13 providers by retaining a substantial percentage of the amount each premium mobile content
14 transaction.

15 8. The rapid and largely unplanned growth of the premium mobile content
16 industry has led both to the above-described structure and to a disastrous flaw within it. That
17 flaw -- understood, perpetuated, and even encouraged by carriers, aggregators, and mobile
18 content providers such as the instant defendants -- is an open secret within the industry, but
19 little understood outside of it. In short, the billing and collection systems established by
20 companies including Defendant in aid of the premium mobile content industry that enriches
21 them are conspicuously free of any checks or safeguards to prevent erroneous and
22 unauthorized charges from being added to customers' bills.

23 9. As Defendant also knows, thousands of dollars have been collected on
24 account of such unauthorized charges for premium mobile content in the industry over the
25 last few years. And while it has always been within the power of companies such as
26 Defendant to institute simple and effective measures that would prevent this, they have
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1 instead knowingly maintained the very system that has allowed these erroneous charges.

2 Indeed, Defendant has reaped and retained its respective shares of the improper collections.

3 10. While the total sales in California of premium mobile content in 2007 amounted
4 to a multimillion dollar sum, the business is still in its infancy. The burgeoning industry has
5 already expanded from ordinary ringtones into mass media-related products such as
6 interactive radio and participatory voting at television and concert events and, most recently,
7 into services that enable cell phones to function as credit cards. Unchecked, Defendant's
8 practices will injure an ever-increasing number of unwitting consumers, inflicting damages
9 of an untold magnitude.

10 11. Unlike transactions made using checks and credit cards, which require a
11 signature or a highly private sixteen-digit credit card number, the only thing a mobile content
12 provider needs to charge a consumer for its products is the consumer's cellular telephone
13 number. Once a mobile content provider has a consumer's cell phone number, it can cause
14 that consumer to be billed for services and products irrespective of whether the consumer
15 actually agreed to purchase them.

16 12. Armed with only a cell phone number, the mobile content provider can simply
17 provide that number, along with an amount to be charged, to a billing aggregator (such as
18 Motricity). The aggregator, in turn, instructs the relevant cellular carrier to add the charge to
19 the bill associated with that cell phone number. The charge will then appear on the
20 consumer's cell phone bill, often with only minimal, cryptic identifying information.

21 13. Because the protections normally present in consumer transactions -- such as
22 signatures and private credit card numbers -- are absent from this process, the likelihood of
23 false charges increases enormously. And because a substantial part of mobile content "sales"
24 are effected through web sites using misleading, oblique, or inadequately explained
25 "consent" procedures, that likelihood increases by another order of magnitude. Mobile
26 content providers have powerful financial incentives to collect as many cell phone numbers

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COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

as possible but little incentive to ensure that the owners of those numbers have truly agreed to purchase their goods and services.

Aggregators' Role In the Scheme to Defraud

4 14. In order to tap into the emerging wireless content marketplace and make
5 content services available to wireless consumers, content providers must first obtain access to
6 wireless carriers' mobile communications networks and frequently do so by "partnering"
7 with aggregators -- intermediary companies such as Motricity that offer content providers (its
8 "content provider partners") direct access to the carriers through existing relationships. This
9 allows content providers to focus on developing and marketing branded content, applications
10 and programs while aggregators manage the complex carrier relationships, distribution,
11 billing and customer service.

12 15. In order to tap into the emerging wireless content marketplace and make
13 content services available to wireless consumers, content providers must first obtain access to
14 wireless carriers' mobile communications networks and frequently do so by "partnering"
15 with aggregators -- intermediary companies such as Motricity that offer content providers (its
16 "content provider partners") direct access to the carriers through existing relationships. This
17 allows content providers to focus on developing and marketing branded content, applications
18 and programs while aggregators manage the complex carrier relationships, distribution,
19 billing and customer service.

16. As an aggregator, Motricity operates mobile transaction networks helping
17 companies, develop, deliver, and bill for mobile content services to compatible mobile
18 devices throughout the State of California and the nation.

23 17. By using their end-to-end technology platforms, their relationships with U.S.
24 carriers, and other value-added services, these aggregators have forged a crucial link between
25 the wireless carriers and the mobile content providers. They have enabled the transformation

1 of wireless into a marketing, content delivery, and collections process, while carving out a
2 profitable role for themselves as very critical middlemen in this rapidly growing industry.

3 18. Motricity has developed a vast distribution system that integrates into the
4 wireless networks of some of the largest wireless carriers nationwide, providing direct
5 connections to numerous mobile operators. As a result, Motricity is able to reach and bill
6 millions of wireless subscribers nationwide.

7 19. While aggregators such as Motricity charge their content provider customers
8 some upfront fees, their revenue is primarily generated through a "revenue share" on
9 transactions for which they bill cell phone subscribers: each time a charge is incurred in
10 connection with the purchase of mobile content services offered by a content provider, the
11 aggregator and/or the content provider cause said charge to be billed directly on the cellular
12 telephone bill of the carrier's customer who currently owns and/or uses the telephone number
13 (claimed to be) associated with said purchase.

14 20. The carrier then bills and collects the charge from its current subscriber,
15 retains about a portion of the proceeds as its "revenue share" and then remits the balance to
16 the aggregator who has direct access to its network, e.g., Motricity, who retains a percentage
17 of the balance in the form of its own "revenue share," and then remits the remainder directly
18 to the mobile content provider (or, in some instances, to another aggregator who then retains
19 a percentage of the balance in the form of its own "revenue share" and then remits the
20 balance to its mobile content provider client).

21 21. Motricity has in California registered thousands of transactions and processed
22 thousands of dollars in transactions over recent years and has profited greatly from its
23 arrangement with its carrier partners, aggregator partners, and content provider partners.

24 22. As Motricity knows, carriers such as AT&T and Verizon routinely process
25 charges for mobile content that have not been authorized by the charged party.

23. Motricity has not only sanctioned this illegal billing, it has promoted it by negotiating and facilitating partnerships between the carriers and the mobile-content providers that contains few if any safeguards to prevent unauthorized charges.

24. Indeed, if Defendant wanted to end this illegal billing, it could do so in an instant. All it would have to do to ensure that they are obtaining the consent of the charged party is agree to process a unique "access code" for each customer account, provided by the carrier to the account holder and his/her authorized representatives at the time it is opened, and require that it be produced anytime a third-party attempts to charge the account. If a matching access code is not provided, no charges would be included on the customer's billing statement.

25. But instead of implementing such a simple safeguard, Defendant has intentionally created and maintained a system that encourages fraud at every step. Such system constitutes a deliberate and willful scheme to cheat large numbers of people out of small amounts of money.

26. Because the amount Defendant is taking is small on an individual basis -- as little as a few dollars to at most several hundreds of dollars per person -- and because of its vast resources, Defendant employs this scheme with the hope and expectation that its illegal conduct will go unpunished.

THE FACTS RELATING TO NAMED PLAINTIFF WALKER

27. In or about 2003, Plaintiff purchased new cell phone service for her personal use from an authorized sales representative of an established wireless carrier.

28. On that same day, in exchange for a cellular telephone service plan, Walker agreed to pay her carrier a set fee for a period of about 12 months.

29. In or about 2007, Walker's cell phone account was charged by Defendant for unwanted mobile content services in the form of premium text messages.

1 30. At no time did Walker authorize the purchase of these products and services
2 offered by Defendant or anyone else and at no time did Walker consent to Motricity's
3 sending of text messages to her cellular telephone.

4 31. During the relevant time period, Defendant caused Walker to be charged
5 service fees for so-called Premium text messages provided by Defendant.

6 32. At no time did Walker authorize Defendant or anyone else to bill her for these
7 charges and at no time did Defendant verify Walker's purported authorization of these
8 charges.

9 33. Defendant has yet to provide a full refund of the unauthorized charges
10 consisting of the premium text message charges, ordinary text messages, data charges, back
11 interest, implement adequate procedures to ensure that such unauthorized charges would not
12 appear in future billing periods and/or an assurance that such unauthorized charges would not
13 appear in future billing periods.

CLASS ALLEGATIONS

15 34. Plaintiff bring this action, pursuant to Code of Civil Procedure § 382 on behalf
16 of herself and a class, defined as follows: The "Class": a class consisting of all wireless
17 telephone subscribers in California who suffered losses or damages as a result of incurring
18 charges on their cellular telephone bills from or on behalf of Motricity not authorized by the
19 subscriber; provided, however, that the following are excluded from this proposed Class: (i)
20 the defendants, and (ii) any employee of a defendant.

21 35. The Class consists of thousands of individuals and other entities, making
22 joinder impractical, in satisfaction of Code of Civil Procedure § 382.

23 36. The claims of Plaintiff are typical of the claims of all of the other members of
24 the Class.

25 37. Plaintiff will fairly and adequately represent and protect the interests of the
26 other members of the classes. Plaintiff has retained counsel with substantial experience in

1 prosecuting complex litigation and class actions. Plaintiff and their counsel are committed to
2 vigorously prosecuting this action on behalf of the members of the classes, and have the
3 financial resources to do so. Neither Plaintiff nor their counsel has any interest adverse to
4 those of the other members of the Class.

5 38. Absent a class action, most members of the Class would find the cost of
6 litigating their claims to be prohibitive, and will have no effective remedy. The class
7 treatment of common questions of law and fact is also superior to multiple individual actions
8 or piecemeal litigation in that it conserves the resources of the courts and the litigants, and
9 promotes consistency and efficiency of adjudication.

10 39. Defendant has acted and failed to act on grounds generally applicable to the
11 Plaintiff and the other members of the respective classes, requiring the Court's imposition of
12 uniform relief to ensure compatible standards of conduct toward the members of the Class.

13 40. The factual and legal bases of Defendant's liability to Plaintiff and to the other
14 members of the Class are the same, resulting in injury to the Plaintiff and to all of the other
15 members of the Class. Plaintiff and the other members of the Class have all suffered harm
16 and damages as a result of Defendant's unlawful and wrongful conduct.

17 41. There are many questions of law and fact common to the claims of Plaintiff
18 and the other members of the Class, and those questions predominate over any questions that
19 may affect individual members of the Class. Common questions for the Class include but are
20 not limited to the following:

21 (a) Whether Motricity has unjustly received money belonging to Plaintiff
22 and the Class and whether under principles of equity and good conscience, Motricity
23 should not be permitted to retain it.

24 (b) Whether Motricity tortiously interfered with contracts between
25 Plaintiff and the Class, on the one hand, and their wireless carriers, on the other hand,

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1 by causing them to be charged for products and services by their carrier that were
2 unauthorized.

3 (c) Whether Defendant's conduct described herein violates California
4 Business and Professions Code sections 17200, *et seq.*

5 (d) Whether Defendant's conduct described herein violates California
6 Consumer Legal Remedies Act ("CLRA").

7 (e) Whether Defendant's conduct described herein violates California
8 California's Computer Crime Law, Cal. Pen. Code § 502.

9 (f) Whether Defendant's actions warrant an accounting.

10 (g) Whether Defendant's actions amount to a trespass to chattels.

11 **FIRST CAUSE OF ACTION**
12 **(Restitution/Unjust Enrichment on behalf of the Class)**

13 42. Plaintiff incorporates by reference the foregoing allegations.

14 43. A benefit has been conferred upon Motrivity by Plaintiff and the Class.

15 Motrivity has received and retain money belonging to Plaintiff and the Class resulting from
16 their billing and collecting significant amounts of money in unauthorized mobile content
17 charges.

18 44. Motrivity appreciates or has knowledge of said benefit.

19 45. Under principles of equity and good conscience, Motrivity should not be
20 permitted to retain the money belonging to Plaintiff and the Class which Motrivity has
21 unjustly received as a result of its actions.

22 46. Plaintiff and the Class have suffered loss as a direct result of Defendant's
23 conduct.

24 **SECOND CAUSE OF ACTION**
25 **(Tortious Interference with a Contract on behalf of the Class)**

26 47. Plaintiff incorporates by reference the foregoing allegations.

27 48. Plaintiff and the Class had contractual relationships with their wireless carriers
28 whereby they agreed to pay a certain sum of money in exchange for activation of their

1 cellular telephone accounts and their carriers' promise to provide various communication and
 2 related services to Plaintiff and the Class and to bill Plaintiff and the Class only for products
 3 or services the purchase of which they had authorized.

4 49. Motricity knew of said contractual relationships and intended to and did
 5 induce a breach or disruption of the contractual relationships.

6 50. Motricity intentionally interfered with said contractual relationship through
 7 improper motives and/or means by knowingly and/or recklessly continually causing to be
 8 placed on the cellular telephone bills of cellular telephone owners across the nation
 9 unauthorized charges.

10 51. Plaintiff and the Class suffered loss as a direct result of the conduct of
 11 Motricity.

12 THIRD CAUSE OF ACTION

13 (Violation of the California Consumer Legal Remedies Act ("CLRA"),
 Cal. Civ. Code § 1770 on behalf of the Class)

14 52. Plaintiff incorporates by reference the foregoing allegations.

15 53. The mobile content services that are the subject of this complaint are services
 16 for other than a commercial or business use, as described in Cal. Civ. Code § 1761(b). The
 17 mobile content services are used for personal, family, or household purposes, and mobile
 18 content service subscribers are consumers under the definition in Cal. Civ. Code § 1761(d).

19 Plaintiff and the other class members use the wireless services for personal, family, or
 20 household purposes, and are consumers under the definition in Cal. Civ. Code § 1761(d).

21 54. As an aggregator, Motricity misrepresents the approval for, characteristics of,
 22 and the obligations associated with the mobile content services when they communicate to
 23 the carriers that Plaintiff and the other class members have consented the mobile content
 24 services and approved the charges for those services. These communications to the carriers to
 25 charge Plaintiff and the other class members for mobile content services, and violate Cal.
 26 Civ. Code § 1770(a)(2), (5), (14).

27

28

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

55. Collectively, these CLRA violations have damaged the Plaintiff and other class members by causing them to pay falsely inflated cellular service bills as well as the lost time required to sort, read, discard and attempt to prevent future charges for unwanted mobile content services, and lost storage space, connectivity, and computing resources on the cellular phones.

56. Plaintiff, on her own behalf and behalf of the other class members, seeks an order enjoining Defendant's collective CLRA violations alleged herein, restitution of property gained by the CLRA violations, and court costs and attorney's fees under the CLRA (Cal. Civ. Code § 1780(d)).

FOURTH CAUSE OF ACTION

**(Violation of California's Unfair Competition Law ("UCL"),
Cal. Bus. & Prof. Code § 17200 on behalf of the Class)**

57. Plaintiff incorporates by reference the foregoing allegations.

58. Motricity's communications to wireless carriers falsely state that Plaintiff and the other class members have approved, authorized, and/or consented to charges for mobile content services, and are deceptive and unfair. Further, these communications are unlawful because they violate the CLRA, CFAA, and the FCA.

59. The acts alleged above are unlawful, unfair or fraudulent business acts or practices and constitute unfair competition under Cal. Bus. & Prof. Code § 17200.

60. Collectively, these UCL violations have damaged the Plaintiff and other class members by causing them to pay falsely inflated cellular service bills, as well as the lost time required to sort, read, discard and attempt to prevent future charges for unwanted mobile content services, and lost storage space, connectivity, and computing resources on the cellular phones.

61. Plaintiff, on her own behalf and behalf of the other class members, seeks an order enjoining Defendant's unfair competition alleged herein, and restitution of property

gained by such unfair competition under the UCL (Cal. Bus. & Prof. Code § 17203), as well as interest and attorney's fees and costs pursuant to, in part, Cal. Code Civ. Proc. § 1021.5.

FIFTH CAUSE OF ACTION
**(Violation of California's Computer Crime Law, Cal. Pen. Code § 502
on behalf of the Class)**

62. Plaintiff incorporates by reference the foregoing allegations.

63. The cellular phones owned by Plaintiff and the other class members are sophisticated electronic devices which are programmable and capable of being used in conjunction with external files, and contain many (if not most) of the same capabilities and equipment as traditional desktop computers (as well as cellular radio signal processing technology). These cellular phones are computer systems under the definition of Cal. Pen. Code § 502(b)(5). Likewise, the mobile content alleged in this Complaint is data under the definition of Cal. Pen. Code § 502(b)(6).

64. The delivery of mobile content to cellular phones is only possible through the Defendant's access to the cellular phones of Plaintiff and the other class members. When the cellular phones owned by Plaintiff and other class members receive mobile content, it consumes computer services as defined Cal. Pen. Code § 502(b)(4), including computer time, data processing, and storage capacity. Moreover, Plaintiff and the other class members' cellular service will be terminated unless they pay additional fees for the receipt of the unauthorized mobile content, whether they authorized that mobile content or not.

65. Through the conduct alleged above, Defendant participates in and/or facilitates the transmission of mobile content to the cellular phones owned by Plaintiff and the other class members. Through this conduct, Defendant violates Cal. Pen. Code § 502(c)(3) by knowingly and without permission using or causing to be used computer services and violate Cal. Pen. Code § 502(c)(4) by knowingly accessing the cellular phones of Plaintiff and the class members and adding data to those phones, without permission.

66. Plaintiff and the other class members are damaged by those violations. Defendant's violations of Cal. Pen. Code § 502 cause the Plaintiff and the other class members to pay charges for mobile content services to which they did not consent. Defendant's violation of Cal. Pen. Code § 502 further damages Plaintiff and other class members by causing them to pay falsely inflated cellular service bills to the Defendant, as well as the lost time required to sort, read, discard and attempt to prevent future charges for unwanted mobile content services, and lost storage space, connectivity, and computing resources on the cellular phones.

67. Plaintiff, on her own behalf and behalf of the other class members, seeks compensatory damages in an amount to be determined at trial and injunctive relief or other equitable relief (including an accounting, and disgorgement of fees obtained while these violations were ongoing), as well as reasonable attorney's fees, against Defendant under Cal. Pen. Code § 502(e).

SIXTH CAUSE OF ACTION
(An Accounting on behalf of the Class)

68. Plaintiff incorporates by reference the foregoing allegations.

69. The accounts at issue are so complicated that an ordinary recourse demanding a fixed sum is impracticable.

70. The balance owed by the Defendant to the Plaintiff and the other members of the Class can be ascertained through a proper accounting.

71. Plaintiff therefore seeks an accounting from Defendant of the monies owed to the Plaintiff and the other members of the Class for aforementioned conduct.

**SEVENTH CAUSE OF ACTION
(Trespass to Chattels on behalf of the Class)**

72. Plaintiff incorporates by reference the foregoing allegations.

73. At all relevant times, Defendant and/or its agents intentionally and without consent, gained access to Plaintiff's wireless handset and the handsets of the class, used

1 Plaintiff's wireless handset and the handsets of the class, occupied memory of these handsets,
2 and/or dispossessed Plaintiff and the members of class of unencumbered access to their
3 wireless handsets.

4 74. In so doing, Defendant intentionally intermeddled with, damaged, and
5 deprived Plaintiff and the class of their wireless handsets, or a portion thereof.

6 75. Under principles of equity and good conscience, Defendant should not be
7 permitted to so interfere with Plaintiff and the Class's possession and use of their wireless
8 handsets.

PRAYER FOR RELIEF

0 WHEREFORE, Plaintiff Palma Walker, on behalf of herself and the Class, prays for
1 the following relief:

- a) Certify this case as a class action on behalf of the Class defined above and appoint Palma Walker as Class Representative, and appoint KamberEdelson, LLC, as lead counsel;
 - b) Declare that the actions of Motricity, as set out above, constitute unjust enrichment, warrant an accounting, tortious interference with a contract, trespass to chattels, and violate the CLRA and UCL;
 - c) Enter judgment against Defendant for all economic, monetary, actual, consequential, and compensatory damages caused by Defendant's conduct, and if its conduct is proved willful award Plaintiff and the Class exemplary damages (for the sake of clarity, Plaintiff explicitly disclaims any claim for damages under the CLRA at this time);
 - d) Award Plaintiff and the Class reasonable costs and attorneys' fees;
 - e) Award Plaintiff and the Class pre- and post-judgment interest;
 - h) Enter judgment for injunctive and/or declaratory relief as is necessary to protect the interests of Plaintiff and the Class; and

1 i) Award such other and further relief as equity and justice may require.

2 **JURY DEMAND**

3 Plaintiff request trial by jury of all claims that can be so tried.

4 Respectfully submitted,

5 Dated: July 3, 2008

KAMBEREDELSON, LLC

6

7

8

9 By: 

10 ALAN HIMMELFARB
11 One of the Attorneys for CAMELLIA
12 WALKER, individually and on behalf of
13 classes of similarly situated individuals

14 ALAN HIMMELFARB
15 KAMBEREDELSON, LLC
16 2757 Leonis Boulevard
17 Vernon, California 90058
18 Telephone: (323) 585-8696

19 JAY EDELSON (pending PRO HAC VICE)
20 MYLES MCGUIRE (pending PRO HAC VICE)
21 KAMBEREDELSON, LLC
22 53 West Jackson Boulevard, Suite 1530
23 Chicago, Illinois 60604
24 Telephone: (312) 589-6370
25 Fax: (312) 873-4610

26

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): ALAN HIMMELFARB KAMBEREDELSON, LLC 2757 Leoniis Boulevard Vernon, California 90058 TELEPHONE NO. (323) 585-8696		FOR COURT USE ONLY FILED ALAMEDA COUNTY 2008 JUL -3 PM 2:51
ATTORNEY FCR (Name): CAMELLIA WALKER, SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS 1225 Fallon St. MAILING ADDRESS CITY AND ZIP CODE Oakland, CA, 94612 BRANCH NAME René C. Davidson Alameda County Courthouse		CLERK OF THE SUPERIOR COURT By <i>Linda Lee</i> DEPUTY
CASE NAME: CAMELLIA WALKER, v. MOTRICITY, INC.		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input checked="" type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: LG08 - 398630
JUDGE: DEPT:		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:		
<p>Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (15) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)</p>	<p>Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)</p> <p>Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)</p> <p>Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)</p>

2. This case is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties d. Large number of witnesses
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. Substantial amount of documentary evidence f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify). 7

5. This case is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 3, 2008

ALAN HIMMELFARB

(TYPE OR PRINT NAME)

SIGNATURE OF PARTY OR ATTORNEY (OR PARTY)



NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2
Cal Rules of Court rules 2.30, 3.220, 3.400-3.403, 3.740;
Cal Standards of Judicial Administration, std 3.10
www.caourtinfo.ca.gov

Unified Rules of the Superior Court of California, County of Alameda

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title:

Walker v. Motricty, Inc.

Case Number:

CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

<input checked="" type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (446)		<input type="checkbox"/> Hayward Hall of Justice (447) <input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448)
Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G) Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no
Other PI/PD / WD Tort	Asbestos (04) Product liability (24) Medical malpractice (45) Other PI/PD/WD tort (23)	<input type="checkbox"/> 75 Asbestos (D) <input type="checkbox"/> 89 Product liability (not asbestos or toxic tort/environmental) (G) <input type="checkbox"/> 97 Medical malpractice (G) <input type="checkbox"/> 33 Other PI/PD/WD tort (G)
Non - PI/PD / WD Tort	Bus tort / unfair bus. practice (07) Civil rights (08) Defamation (13) Fraud (16) Intellectual property (19) Professional negligence (25) Other non-PI/PD/WD tort (35)	<input checked="" type="checkbox"/> 79 Bus tort / unfair bus. practice (G) <input type="checkbox"/> 80 Civil rights (G) <input type="checkbox"/> 84 Defamation (G) <input type="checkbox"/> 24 Fraud (G) <input type="checkbox"/> 87 Intellectual property (G) <input type="checkbox"/> 59 Professional negligence - non-medical (G) <input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)
Employment	Wrongful termination (36) Other employment (15)	<input type="checkbox"/> 38 Wrongful termination (G) <input type="checkbox"/> 85 Other employment (G) <input type="checkbox"/> 53 Labor comm award confirmation <input type="checkbox"/> 54 Notice of appeal - L.C.A.
Contract	Breach contract / Wrnty (06) Collections (09) Insurance coverage (18) Other contract (37)	<input type="checkbox"/> 04 Breach contract / Wrnty (G) <input type="checkbox"/> 81 Collections (G) <input type="checkbox"/> 86 Ins. coverage - non-complex (G) <input type="checkbox"/> 98 Other contract (G)
Real Property	Eminent domain / Inv Cdm (14) Wrongful eviction (33) Other real property (26)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G) <input type="checkbox"/> 17 Wrongful eviction (G) <input type="checkbox"/> 36 Other real property (G)
Unlawful Detainer	Commercial (31) Residential (32) Drugs (38)	<input type="checkbox"/> 94 Unlawful Detainer - commercial <input type="checkbox"/> 47 Unlawful Detainer - residential <input type="checkbox"/> 21 Unlawful detainer - drugs Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No
Judicial Review	Asset forfeiture (05) Petition re: arbitration award (11) Writ of Mandate (02) Other judicial review (39)	<input type="checkbox"/> 41 Asset forfeiture <input type="checkbox"/> 62 Pet. re: arbitration award <input type="checkbox"/> 49 Writ of mandate Is this a CEQA action (Publ. Res. Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> 64 Other judicial review
Provisionally Complex	Antitrust / Trade regulation (03) Construction defect (10) Claims involving mass tort (40) Securities litigation (28) Toxic tort / Environmental (30) Ins covrg from cmplx case type (41)	<input type="checkbox"/> 77 Antitrust / Trade regulation <input type="checkbox"/> 82 Construction defect <input type="checkbox"/> 78 Claims involving mass tort <input type="checkbox"/> 91 Securities litigation <input type="checkbox"/> 93 Toxic tort / Environmental <input type="checkbox"/> 95 - Ins covrg from complex case type
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment <input type="checkbox"/> 08 Confession of judgment
Misc Complaint	RICO (27) Partnership / Corp. governance (21) Other complaint (42)	<input type="checkbox"/> 90 RICO (G) <input type="checkbox"/> 68 Partnership / Corp. governance (G) <input type="checkbox"/> 68 All other complaints (G)
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name <input type="checkbox"/> 69 Other petition

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
AT SAN FRANCISCO

CAMELLIA WALKER, individually and on
behalf of a class of similarly situated individuals,

Plaintiff,

vs.

MOTRICITY, INC., a Delaware corporation,

Defendant.

CV Case No. 08 3648

MHP

DECLARATION OF PAUL BOCK

I, Paul Bock, having been duly sworn, according to law, do hereby depose and state as follows:

1. I am an adult resident of Cary, North Carolina, and make this declaration from my personal knowledge and for use in this case.
2. I am the Director of Engineering for Motricity, Inc. ("Motricity") and have served in this capacity for a year and a half. I have extensive knowledge of the development and monthly efforts to sustain various aspects of the mobile content that Motricity provides to its end users.
3. I have reviewed Paragraph 24 of the Complaint. In order to comply with the relief requested therein, Motricity would be forced to effectuate a system whereby a unique "access code" for each customer account would be provided.
4. Below is an itemized breakdown of the development costs (one time), hardware and licensing costs (one time), and monthly maintenance costs (over five years) of such a system. The costs listed are the lowest reasonable estimated costs for this project, but the actual costs would likely be greater than those set forth below.

5. The itemized list explains and describes: (1) the work required to create, develop, and maintain such an access code; (2) the hours required to accomplish each part of such a project; (3) the cost of each individual aspect of the project, based on the reasonable contract rate for each of the services listed; and (4) the lowest estimated total cost.

6. As is evident below, the most conservative estimate of the total cost of any system that would give each Motricity user a unique "access code" for his/her account in an attempt to prevent unauthorized billing is \$7,985,430.00.

Motricity System Changes

Costs

One-Time Development Costs

Part One

Architect – Contractor:

- * Create requirements and general architecture

400 hours (50 person days) at \$125/hour

\$50,000.00

Developers – Contractor:

- * Application programming interface ("API") for content provider to request an accessCode. This will trigger an end user registration where Motricity manages opting in the end user. The user is opted in via an SMS message to the phone. User is given the accessCode for this purchase and upon responding "Yes" to accept the charges via mobile origination ("MO"), content provider is granted the accessCode.

- Send SMS opt in and track responses
 - Maintain session as end user could be in multiple “opt-ins”
 - Create system to post notification of access code to content provider
 - Support HyperText Transfer Protocol (“HTTP”) API calls
 - Support Short Message Peer-to-peer Protocol (“SMPP”) calls
 - Support Wireless Application Protocol (“WAP”) session (accessCode to be entered into WAP site via end user). End user browser is re-directed to Motricity to ensure opt in.
 - Support HTTP session (accessCode to be entered into web site via end user). End user browser is re-directed to Motricity to ensure opt in.

* Internal API to retrieve accessCode given a carrier and a phone number for validation in Motricity system.

* Test tools

2,200 hours (275 person days) at \$125/hour contract rate	<u>\$275,000.00</u>
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QA – Contractor:

* The majority of the work will require either new code or changes to core modules

1,120 hours (140 person days) at \$95/hour	<u>\$106,400.00</u>
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DBA – Contractor:

- * Schema/system to archive accessCodes
- * Schema/system to archive WAP/WEB sessions
- * Modifying and adding data base (“DB”) schemas to support accessCode

720 hours (65 person days) at \$125/hour	<u>\$65,000.00</u>
--	--------------------

Product Manager:

* Documentation of WEB/WAP/SMS/HTTP interfaces

160 hours (20 person days) at \$125/hour	<u>\$20,000.00</u>
--	--------------------

Project Manager – Contractor:

* Manage entire project.

2,200 hours (275 person days) at \$125/hour	<u>\$275,000.00</u>
---	---------------------

Development Part One Total:	<u>\$791,400.00</u>
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Part Two

Architect - Contractor:

* Create requirements and general architecture

240 hours (30 person days) at \$125/hour	<u>\$30,000.00</u>
--	--------------------

Developers – Contractor:

* Add accessCode parameter to all interfaces and APIs for all supported versions (SMPP and HTTP)

* Update business service tier (“BST”) (to use new parameter(s))	<u>\$395,000.00</u>
--	---------------------

*BST modified to track accessCode violations and lock out content providers

*Internal systems to support new access parameter

- Subscriptions Management
- Deliver Engine
- Campaign Manager
- Media Server
- Subscriber Management
- Billing Systems Billing Action Processor/Billing Action Service (“BAP/BAS”)
- Each Billing Interface

*Notifications updated to alert Content Provider for invalid accessCodes

Total Developers Cost: 3,160 hours(395 person days) x
\$125/hour contract rate

QA – Contractor

*Code changes to core modules, including full QA regression. (395 person days)

Total QA Cost: 3,160 hours (395 person days) x \$95/hour contract rate	<u>\$300,200.00</u>
---	---------------------

Project Manager – Contractor

*Project management services over all modules (395 person days)

Total Project Manager Cost: 3,160 hours (395 person days) x \$125/hour contract rate	<u>\$395,000.00</u>
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Gateway Operations

*Migration of content providers to new API (30 person days)

Total Gateway Operations Cost: 240 hours (30 person days) x \$119/hour contract rate	<u>\$28,560.00</u>
---	--------------------

Product Manager -- Contractor	<u>\$11,250.00</u>
--------------------------------------	--------------------

*Documentation updated for SMPP, HTTP APIs

*Documentation created to aid in content provider migration

Total Product Manager Cost: 90 hours (15 person days) x
\$125/hour contract rate

DBA – Contractor

*All reports updated to track “Invalid Access Code Billings”

*Securing accessCode master DB with encryption/secure hardware,
etc.

*Modifying and adding DB schemas to support accessCode

Total DBA Cost: 720 hours (90 person days) x \$125/hour
contract rate \$90,000.00

Development Part Two Total: **\$1,250,010.00**

5 Year Sustainment Costs

Developers – Contractor

480 hours (60 person days) at \$125/hour = \$60,000 per month
for 5 years \$3,600,000.00

Ops – Contractor

160 hours (20 person days) at \$119/hour = \$19,067 per month
for 5 years \$1,144,020.00

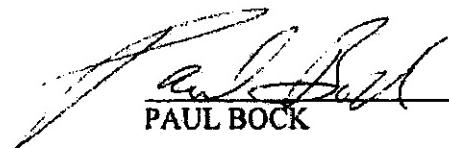
DBA – Contractor

160 hours (20 person days) at \$125/hour = \$20,000 per month
for 5 years \$1,200,000.00

Sustainment Total: **\$5,944,020.00**

Total Project Cost: **\$7,985,430**

I declare under penalty of perjury that the foregoing is true and correct. Executed on July
30, 2008.



PAUL BOCK